

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELEANOR M. CLEMENTS and U.S. POSTAL SERVICE,
REVERE STATION, Revere, Mass.

*Docket No. 96-2533; Submitted on the Record;
Issued October 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that her back condition is causally related to her employment.

On May 5, 1995 appellant, then a 39-year-old window clerk, filed an occupational injury claim for strained back muscles which she related to her employment duties in December and January 1994. She noted that a herniated L5-S1 disc was diagnosed February 2, 1995. In an October 15, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that she had not shown how her claimed condition was causally related to factors of her employment. In a May 20, 1996 decision, an Office hearing representative, upon written review of the record, found that appellant had established that she was engaged in physical activities of lifting, bending, stooping, reaching, carrying, and twisting in the performance of her duties during the pre-Christmas season as contributing factors to her back condition but had not submitted any medical evidence giving an opinion on causal relationship based on an accurate history between the employment factors and the condition claimed. The hearing representative noted that one medical report was based on a traumatic incident of December 13, 1994 but he stated that appellant did not relate her condition to a traumatic incident.

The Board finds that the case is not in posture for decision.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative, and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.² As

¹ 5 U.S.C. §§ 8101-8193.

² *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.³ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁵

In her initial statement appellant indicated that on December 13, 1994 her back was hurting because of customer volume and the many packages involved. Appellant noted that she walked into walls a few times with large, heavy packages while trying to get them to the back room. Appellant noted that some packages of less than 30 pounds had to be put on a window sill that was hard to reach because a table and first class mail tubs were in front of it. The next day she woke up with pain in her back and both legs and could barely walk. Appellant called in sick to work on December 15, 1994 because her back had become stiff and painful. A physician at the time prescribed muscle relaxants and rest. Appellant returned to work on December 20, 1994 but was unable to bend over and was still in pain with a weak right back and left leg problems. Appellant indicated that she continued to have pain with trouble walking through the rest of December 1994 and into January 1995. She noted that on February 2, 1995, an orthopedic surgeon diagnosed a herniated disc. Appellant related her back problem to the heavy lifting of packages and constant bending to complete postal insurance and certified or registered mail form.

In a March 16, 1995 report, Dr. Albert H. Fine, an internist, indicated that he had seen appellant on December 15, 1994 with a history of back pain persisting for 24 hours, aggravated by bending and walking. He diagnosed a muscle strain at that time. Dr. Fine examined her again on December 30, 1994 and January 20, 1995 for back pain. He stated that he did not know if appellant's condition was caused by appellant's employment but indicated that extensive standing, bending, and lifting associated with appellant's job may aggravate her condition. Dr. Fine submitted a copy of a February 2, 1995 report from Dr. March M. Berenson, a Board-certified orthopedic surgeon who noted that in December 1994, appellant started having pain in her back with some radiation into her leg. He stated that his findings were typical for L5-S1 disc herniation on the left. In a May 9, 1995 report, Dr. Berenson stated that an MRI (magnetic resonance imaging) scan revealed a moderate, left-sided, L5-S1 disc extrusion and an EMG (electromyogram) showed S1 radiculopathy on the left. He indicated that these findings were consistent with appellant's symptoms.

Appellant submitted an August 30, 1995 memorandum from a coworker who stated that on December 13, 1994 he was standing at the passport door at the employing establishment and saw appellant carrying a heavy package into the back room. He indicated that he observed appellant hit the dividing wall door jamb hard and had to put the package down on the window sill. He noticed that appellant was in obvious back pain and had to catch her breath before she

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁵ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

returned to work. In a September 26, 1995 report, Dr. Frederic T. Huffnagle, a Board-certified orthopedic surgeon, gave a history of appellant on December 13, 1994 handling packages during the Christmas rush and twisting and hitting the wall with one package, injuring her back with a twisting motion, experiencing pain across the back and radiating down the posterior aspect of her leg. He concluded that appellant had a herniated L5-S1 disc that was ruptured in the line of duty on December 13, 1994 and was definitely work related.

In her initial statement, appellant stated that on December 13, 1994 she was carrying heavy packages and sometimes hitting walls while carrying the packages into the back room, including a window sill that was hard to reach. At that time she related her back pain to the carrying of heavy packages and constant bending during the Christmas season at the employing establishment. She subsequently submitted a statement of an eyewitness who saw appellant, on December 13, 1994, bump into a door jamb with a package and have back pain after she put the package on a window sill. This eyewitness account is consistent with appellant's initial history of bumping into walls on that day while carrying heavy packages with a focus on one particular incident, followed by severe back pain and pain in both legs on December 14, 1994. Dr. Huffnagle concluded that appellant's herniated L5-S1 disc was related to this incident on December 13, 1994. While appellant initially related her condition to occupational factors of her employment, she subsequently submitted factual and medical evidence that related her back pain to a specific incident on December 13, 1994. This evidence is consistent with the evidence of record and is not contradicted by any other medical evidence of record. The other medical evidence of record from Dr. Fine did not give an opinion on the cause of appellant's back pain but did conclude that it was aggravated by factors of appellant's employment. The evidence of record is not sufficiently rationalized to establish that appellant's herniated L5-S1 disc is related to the December 13, 1994 incident. However, the evidence is sufficient to require further development of the record.⁶ On remand the Office should prepare a statement of accepted facts and refer appellant, together with the statement of accepted facts and the case record to an appropriate physician for an examination and second opinion on whether appellant's herniated L5-S1 disc was causally related to the incident of December 13, 1994 or to the factors of appellant's employment.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs, dated May 20, 1996 and October 15, 1995, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
October 2, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member